



CALIFORNIA ASSOCIATION OF REALTORS®

September 14, 2004

Board of Governors of the Federal Reserve System
Attn: Jennifer J. Johnson, Secretary
20th Street and Constitution Avenue N.W.
Washington, DC 20551

2004 OFFICERS

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President

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*Executive Vice President/
State Secretary*

Re: Docket No. OP-1209

To Whom It May Concern:

On behalf of the 140,000 members of the California Association of REALTORS® (C.A.R.), I would like to submit the following comments for consideration in the Board of Governors of the Federal Reserve System's (Board) and Federal Trade Commission's (FTC) joint study on the performance of consumer reporting agencies and furnishers of consumer credit past compliance with the requirements under the Fair Credit Reporting Act (FCRA) as it pertains to the "prompt investigation of disputed consumer information" and the rectification of inaccurate information.

C.A.R. asks the Board and FTC to focus their study on: 1) improving the expediency of national credit agencies (agency) and furnishers of credit (creditor) responses to consumer disputes about inaccuracies in their credit reports, 2) enacting sufficient financial penalties that allow the FTC and Consumers to protect the integrity of credit reports while providing adequate incentives for creditor and agency compliance, and 3) encourage companies and consumers to utilize technology as a mean to facilitate the reinvestigation process.

According to the National Association of REALTORS® and the U.S. Census Bureau, in 2003, over eight-million homebuyers realized the American dream, the majority of which did so by utilizing the services of REALTORS®. Due to the REALTORS® unique position at the center of the transaction, REALTORS® see first-hand the devastating impact of inaccurate negative information on a consumer's credit report. 93% of all residential purchases are financed through lenders (the remainder are all cash sales). The credit report and credit score of a borrower are major factors in how lenders base the credit



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and credit score of a borrower are major factors in how lenders base the credit worthiness of a borrower. If this score is artificially low due to inaccurate information, a lender may wrongly refuse to loan funds to the borrower or loan only at much higher interest rates. As a result, many potential homeowners may be prevented from purchasing a home and others will do so at greater expense.

C.A.R. agrees with and supports Representative Michael Oxley's statement that the passage of the Fair and Accurate Credit Transactions Act (FACT) would "give consumers important new rights" pertaining to the national credit reporting system. C.A.R. strongly encourages the Board and FTC to maintain the focus of their study on Congress's intent of strengthening consumer protection.

With the passage of FACT consumers have gained more access to and control over their own credit reports than at any time in history. Thanks to America's technological advancements in instant credit and the national credit reporting system, and its application to the mortgage finance market, it is estimated that consumers have saved nearly \$100 billion annually. However, when there is a failure in this otherwise smooth running machine the results can be devastating to individuals. Currently, available methods for rectification are severely inadequate and antiquated.

In response to the Board's inquiry of:

"What, if any, legislative or regulatory changes do you recommend besides changes made by the FACT Act and its implementing rules? How would these recommendations improve the system? What benefits or burdens should be considered?"

I. Reinvestigation period of 45 days should be shortened to 5 business days.

C.A.R. believes the Board and FTC must take whatever steps are necessary, either through regulation and/or the encouragement and support of Congressional legislation, to reduce the number of days an agency and creditor have to reinvestigate a disputed item on a consumer report to 5 business days. Currently, an agency or creditor that is notified by a consumer of inaccurate credit information has 45 days to reinvestigate the item in question. In today's brisk and fast moving real estate market, the average home in California stays on the market for only 25 days. 45 days to investigate an error may cause a potential homebuyer to lose the opportunity to purchase a home.

With the advancement and increased use of technology in business today, lenders are able to approve consumers for a loan inside of 30 to 45 minutes of receiving their applications. The average time to close a loan from application to funding is less than 30 days, which often includes: title search, hazard, inspection and inspection reports, appraisal, document preparation, and mailing hardcopies for signatures. The Board and FTC must ask why creditors and agencies would need 45 days to investigate an error on a consumer report. The current 45 days allowed for reinvestigation is an unjustifiably long time for consumers to have to wait when companies are no longer required to send the clerk to a basement and/or warehouse to sift through boxes containing thousands of paper documents looking for an item in question. Businesses must utilize technology for every aspect of servicing the consumer, including an expedient response to a disputed item in a credit report.



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In the alternative, an expedited process of 5 business days should be established for real estate loans and other transactions that are substantially effected by credit scores and are of a nature that necessitate a shortened time to avoid undue hardship being placed upon the consumer. For non-urgent transactions, the 45 day review may be retained. By so doing, remedies can be obtained in a timely fashion for all types of transactions.

II. Maximum fine of \$2,500 should be changed so that it is the minimum fine and consumers should be enabled to bring private right of action against offenders.

Currently there is a lack of deterrence for the businesses that choose not to comply with the FCRA. The FTC should be required to impose a minimum of \$2,500 per offense with no cap. The FCRA empowers the FTC to lay financial penalties on entities "in the event of a knowing violation, which constitutes a pattern or practice of violations." (15USC, Sec. 1681s) Agencies and creditors that knowingly violate the FCRA multiple times with willful disregard to the law must be punished proportionately to the number of violations to act as a deterrent against future errors by themselves or other organization within the credit reporting industry.

In addition, consumers must be given a private right of action within the FCRA, which will give consumers the ability to sue for actual and punitive damages equal to three times the amount of actual damages. In the event that no actual damages can be shown, statutory damages in the amount of \$2,500 per error should be applied. An individual right of action is critical due to the extremely personal damages that are suffered by consumers as a result of erroneous credit histories.

When a family, whose offer was accepted to purchase a home, loses that home due to the willful negligence of either a creditor and/or agency, it can be emotionally devastating. Along with the emotional hardship, the would-be homebuyer often will realize a considerable financial loss due to forgoing substantial tax deductions, incurring additional rental costs and storage costs. Also, based on the timing of the discovery within the real estate transaction process, a potential buyer could face costs associated with stopping the transaction (including escrow fees, inspection fees, and appraisal fee). Lastly, the potential homebuyer will lose the social and psychological benefits of homeownership.

For those few homebuyers who would still qualify for a loan with the reduced credit score, they will have to pay substantially more for the loan through higher interest rates. As a result, the homebuyer will be forced to pay much more for the home over the life of the loan. For example, a quarter-percent interest rate increase in a 30-year fixed-rate loan would cost the consumer over \$6,000 in extra interest paid for every \$100,000 financed.

It is critical that the financial penalty be sufficient to cover the full monetary loss realized by the consumer, and serve as a strong incentive to encourage large multinational creditors to adhere to the new requirements.

III. Technology should be utilized to expedite the reinvestigating process.

According to the FTC's "How to Dispute Credit Report Errors" consumers should tell an agency "in writing" and sent by "certified mail, return receipt requested," of any error in their credit report. C.A.R. strongly encourages the FTC to allow alternate means of communication by consumers to



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report errors. Creditors and agencies should be required to offer consumers the ability to report credit report disputes via email or fax-machine without incurring additional costs.

Currently, credit agencies allow disputes to be submitted via email but only by consumers paying for a report to obtain a "report number," which is then used to file a complaint. This information has no bearing on the dispute itself and serves only as a bar to filing a dispute and prolonging the investigation process. Under the FACT consumers will be entitled to one free credit report from each national credit bureau. The credit bureaus should be required to include a report number on these free reports, so that consumers can file disputes without having to pay for duplicate reports. Since agencies are clearly equipped to handle electronic and other means of communications, including faxes, they should be required to do so without seeking additional compensation from consumers.

In addition, all of the national credit bureaus should be required to communicate disputes to the other bureaus when one bureau is notified of a dispute by a consumer. By so doing, a consumer would only have to notify one bureau of the dispute and it would be flagged in all credit reports. Currently, a consumer wishing to have an error on their report corrected would have to go to the individual agencies, request a copy of their report, and contact each agency with the individual report number on the complaint letter. The three national agencies currently have means by which they may communicate between each other about consumer credit report information. Allowing the consumer to only go through one agency would greatly expedite the dispute process and ensure accurate information is contained in all three credit reports.

In conclusion, C.A.R. urges the Federal Reserve Board and Federal Trade Commission to make changes to the credit reporting system as discussed above in order to improve its ability to properly serve consumers.

I thank you for your willingness to consider the comments of the Association. If you have any questions, please contact Janet M. Gagnon-Stovall, C.A.R.'s Director of Public Policy, by phone 213-739-8272, fax 213-739-7272, or email janetg@car.org.

Sincerely,



Ann Pettijohn
President, California Association of REALTORS®



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